

In the Matter of )  
Expanding the Economic and Innovation ) Docket No. 12-268  
Opportunities of Spectrum )  
Through Incentive Auctions )

October 23, 2013

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October 23, 2013

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 Twelfth St, S.W.  
Washington, DC 20554

Re: *Expanding the Economic and Innovation Opportunities of Spectrum Through  
Incentive Auctions, GN Docket No. 12-268*

Dear Ms. Dortch:

With this letter the [LPTV Spectrum Rights Coalition](#) “the Coalition”, submits Comments solicited from its FCC broadcast licensee members holding more than 560 LPTV licenses and construction permits in 31 states. The Coalition is a cross-section of the 6400+ LPTV holders, nearly evenly split between licensed LPTV digital TV stations, construction permits, and TV translator facilities; and we number close to 100 private and public organizations. Collectively the Coalition members air hundreds of local and national culturally diverse channels of content, reaching over 50 million viewers.

A key component of the LPTV service is the role these licensees perform with innovation. From the early utilization of the UHF spectrum for television broadcasting to the current wide spread deployment of multi-channel digital sub-channels, the LPTV service has taken the lead with the introduction of new services, technologies, and business models. One of the reasons this innovation is prevalent within the LPTV service is because of the lower cost of deployment due to the lower levels of transmission power, and most importantly, to the freedom the service has with its programming requirements. These two factors, combined with the

marketplace need to provide niche audiences with new and specialty programming, LPTV operators have been able to help launch new national networks, and to supply their communities with a wide variety of content.

Congress recognized the innovation role of LPTV when it enacted the [1999 Digital Data Services Act](#), which the Coalition described in an [August 27, 2013 NPRM submission](#). While this Act was initially proscribed by Congress as a pilot project, the FCC in its' [subsequent 2001 implementing Order](#), recognized the right of the twelve LPTV licenses which are part of the Act to a perpetual use of alternative transmission methods, as long as they adhered to the current LPTV rules of interference. While these pilot project licensees have not yet fully deployed digital data services, the 1999 Act illustrates the role of innovation the LPTV can serve.

In the 2012 Spectrum Auction enabling [legislation](#), Congress included an LPTV protection clause which clearly states that the current rights of the LPTV service would not be affected by the auction process. The Coalition believes that this means that the LPTV service should continue its' development of innovation. Congress also included in the Act a provision so that auction eligible broadcast licensees (both full power and Class-A) could forgo channel relocation funds and be granted service waivers for flexible use transmission systems.

Two major broadcast ownership groups, [Sinclair Broadcasting Group, Inc.](#), and [Gray Television, Inc.](#), have each recently submitted NPRM comments which officially declare their intention to decline Spectrum Auction relocation funds if they can receive these flexible use service waivers *prior to* the spectrum auction. These two station ownership groups represent more than 230 FCC broadcast licenses, with about 200 which are auction eligible for relocation funding. Collectively this could represent as much as a \$200 million savings in the amount the FCC would need to use from the spectrum auction proceeds. In addition, the revenues from ancillary service fees for flexible use could provide the FCC and the Federal government with [an on-going annual revenue source](#) of tens billions of dollars, which is already authorized as part of the digital television rules.

Within the LPTV service there are at least four multi-license ownership groups which have expressed their interest and intent to deploy flexible use transmission services if service waivers can be obtained. [Landover Wireless](#), with (50+ operating stations and 500+ construction permits) has submitted [NPRM comments](#) alerting the FCC that they want service waivers, [CMMB USA](#) (10+ operating stations), [CTB Networks](#) (150+ construction permits), [WatchTV](#) (10+ operating stations and 15+ construction permits), and [DTV America](#) and their [DTV Cast](#) system (5 operating stations and 100+ construction permits). In addition, there are numerous other individual LPTV licensees which have expressed interest in deploying flexible use transmission services. Of note is [Spectrum Evolution](#) which has been advocating LPTV flex-use for over four years now. The [Broadcasting Alliance](#) also advocates for flex-use service waivers.

The Coalition has identified approximately 2000 LPTV construction permits which are scheduled to be built prior to or during the spectrum auction process, and it has described in detail the potential problem this creates with an unfair double-building of facilities if a post-auction LPTV channel repacking happens too closely in time to the completion dates of these construction permits. The Coalition has determined that many of these LPTV builders would totally revise their construction plans and would deploy flexible-use transmission systems and innovative digital data services if service waivers were also available for LPTV.

However, individual service waivers may not be needed for the LPTV licensees. With a simple language change to the [1999 Digital Data Services Act](#) (DDSA), most all LPTV licensees could choose if they wanted flexible transmission technologies. With many of them in rural areas they could in a very short time provide much needed rural broadband services in conjunction with existing wireless service internet providers. Unlike the process of service waivers, the DDSA enables LPTV licensees to provide a simple letter notice to the FCC of their intent to deploy an alternative transmission service. While the Coalition does not advocate a “wild west” of new transmission standards, there is no reason proven technological systems could not be rapidly deployed as long as the LPTV rules for interference are adhered to.

The Coalition agrees with the comments for [Sinclair Broadcasting Group, Inc.](#), and the potentially rapid adoption of the [ATSC 3.0 standard](#). This new standard will not just be an incremental change to the ATSC standard, but will harmonize with other proven and extensively deployed systems in Europe and Asia. The Coalition also agrees that these new innovative services need to start to be tested in real world market conditions as soon as possible. In most cases LPTV is prohibited from must-carry MVPD carriage, and does not benefit from retransmission consent fee negotiations, which means these historic and new lucrative revenue sources of the primary full power FCC broadcast licenses are closed off from LPTV. By deploying flexible use services LPTV could both provide their coverage areas valuable new services, and fulfill the [National Broadband Plan](#) objectives. All that the FCC and Congress has to do is a simple change in current enabling legislation, which will not in any way take away any rights or economic opportunities from other broadcasters.

The [Coalition has shown](#) that LPTV licensees have been harmed during the past two years knowing that they are not eligible for the auction, have to pay for their own channel relocation costs, may have to take a VHF channel assignment, have to re-compete for an available frequency which may reduce or change their served audiences and population counts, or may even lose access to a frequency in their current TV DMA. These factors have both dramatically reduced the valuations of LPTV licenses, and have severely limited their capabilities for access to credit. While there has been a vibrant marketplace for stations and licenses, the valuations are at historic lows and basically represent close-outs.

If LPTV were allowed service waivers for flexible use transmission systems the valuations of LPTV licenses would immediately rise to historic highs, access to investment and debt capital would be greatly enhanced and increased, a new wave of digital entrepreneurship could take off, and the goals of the National Broadband Strategy could be rapidly served in rural and hard-to-serve areas.

In addition to requesting that LPTV licensees be able to receive the same flexible use rights as auction eligible full power and Class-A licenses have received via the Spectrum Auction legislation, the Coalition is advocating a “[new primary status](#)” for LPTV when they accomplish their post-auction channel repacking. Since LPTV licensees have to pay for their own relocation costs, which would be the same as auction eligible stations not taking relocation funds, it is only fair that LPTV be granted the same flexible-use service waivers. A new primary status is for interference purposes only, and would not confer other primary service benefits such as MVPD must-carry status or MYPD retransmission mandatory negotiations. LPTV licenses represent 74% of all FCC broadcast television licenses, and in order to meet the goals of the National Broadband Plan the FCC and Congress need to start treating LPTV the same as full power licensees.

Since most Class-A licensees will be cashing out in the auction and leaving productive service in their communities, the remaining 6400+ LPTV and TV translators should be freed up to innovate, obtain investment, and create jobs. With this in mind, it is essential that LPTV be granted a new primary status so that flexible-use investments can have an investment horizon long enough to generate an adequate return on investment. The 6400+ licensees of the LPTV and TV translator service will have on average a \$156,250 cost during the auction and channel repacking process, adding up to an unfunded government mandate of over \$1 billion. Unleash LPTV entrepreneurs to serve America, and stop the internet-age industrial policy of picking digital winners and losers. Let LPTV compete on a level digital playing field and we will deliver, as we have done during the past 25+ years. Remember, LPTV is literally the only service where small business start-up's, minorities, and women can become FCC television licensees. Do not close off LPTV from the digital flexible use future and all that it can become.

Respectfully submitted,

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Mike Gravino  
Director